



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/614,363	07/12/2000	John M. Airey	15-4-632.51	2211

28393 7590 03/04/2003

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, NW
SUITE 600
WASHINGTON, DC 20005-3934

EXAMINER

HAVAN, THU THAO

ART UNIT	PAPER NUMBER
----------	--------------

2672

DATE MAILED: 03/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/614,363

Applicant(s)

AIREY ET AL.

Examiner

Thu-Thao Havan

Art Unit

2672

V

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-13, 22, 26-33 and 35-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-13, 22, 26-33 and 35-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Double Patenting

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims **1-3, 5-13, 22, 26-33, and 35-37** are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of renumbered claims 1-4, 7, 11, 13, 17-24, 27, and 29-31 of copending Application No. 09/098,041. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

The subject matter claimed in the instant application is fully disclosed in the copending Application No. 09/098,041 and is covered by the copending Application No. 09/098,041 since the copending Application No. 09/098,041 and the application are claiming common subject matter, as follows:

A.) Re claims **1-2**, claim 1 of copending Application No. 09/098,041 teaches claims 1-2 of the present application (page 2 of amendment filed on 7/12/00 of

copending Application No. 09/098,041). Claims 1 and 2 of the application recite the scope of invention of claim 1 in the copending Application No. 09/098,041.

B.) Re claim **3**, claim 2 of copending Application No. 09/098,041 claims all the limitations of claim 3 of the present application (page 3 of amendment filed on 7/12/00 of copending Application No. 09/098,041).

C.) Re claim **5**, claim 3 of copending Application No. 09/098,041 claims all the limitations of claim 5 of the present application (pages 3-4 of amendment filed on 7/12/00 of copending Application No. 09/098,041).

D.) Re claim **6**, claim 11 of copending Application No. 09/098,041 claims all the limitations of claim 6 of the present application (page 35 filed on 6/16/98).

E.) Re claim **7**, claim 27 of copending Application No. 09/098,041 claims all the limitations of claim 7 of the present application (page 39 filed on 6/16/98).

F.) Re claim **8**, claim 4 of copending Application No. 09/098,041 claims all the limitations of claim 8 of the present application (page 4 of amendment filed on 7/12/00 of copending Application No. 09/098,041).

G.) Re claim **9**, claim 29 of copending Application No. 09/098,041 claims all the limitations of claim 9 of the present application (page 40 filed on 6/16/98).

H.) Re claim **10**, claim 30 of copending Application No. 09/098,041 claims all the limitations of claim 10 of the present application (page 40 filed on 6/16/98).

I.) Re claim **11**, claim 31 of copending Application No. 09/098,041 claims all the limitations of claim 11 of the present application (page 40 filed on 6/16/98).

J.) Re claim **12**, claim 7 of copending Application No. 09/098,041 claims all the limitations of claim 12 of the present application (page 6 of amendment filed on 7/12/00 of copending Application No. 09/098,041).

K.) Re claim **13**, claim 13 of copending Application No. 09/098,041 claims all the limitations of claim 13 of the present application (page 34 filed on 6/16/98).

L.) Re claims **22, 26, 31-33, and 35**, claims 17 and 22 of copending Application No. 09/098,041 teach claims 22, 26, 31-33, and 35 of the present application (pages 6-7 of amendment filed on 7/12/00 of copending Application No. 09/098,041).

M.) Re claim **27**, claim 18 of copending Application No. 09/098,041 claims all the limitations of claim 27 of the present application (page 37 filed on 6/16/98).

N.) Re claim **28**, claim 19 of copending Application No. 09/098,041 claims all the limitations of claim 28 of the present application (page 37 filed on 6/16/98).

O.) Re claim **29**, claim 20 of copending Application No. 09/098,041 claims all the limitations of claim 29 of the present application (page 37 filed on 6/16/98).

P.) Re claim **30**, claim 21 of copending Application No. 09/098,041 claims all the limitations of claim 30 of the present application (page 37 filed on 6/16/98).

Q.) Re claim **36**, claim 23 of copending Application No. 09/098,041 claims all the limitations of claim 36 of the present application (page 38 filed on 6/16/98).

R.) Re claim **37**, claim 24 of copending Application No. 09/098,041 claims all the limitations of claim 37 of the present application (page 38 filed on 6/16/98).

Art Unit: 2672

Inquiries

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu-Thao Havan whose telephone number is (703) 308-7062. The examiner can normally be reached on Monday to Thursday from 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Razavi can be reached on (703) 305-4713.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231


or faxed to:

(703) 872-9314 (for Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

Thu-Thao Havan
Art Unit: 2672
February 13, 2003



MICHAEL RAZAVI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600